

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RICHARD LEE COKER,)
))
 Petitioner,))
))
v.)) **Case No. CIV-10-713-R**
))
JUSTIN JONES, Director,))
))
 Respondent.))

ORDER

Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered February 14, 2011 [Doc. No. 14] and Petitioner's Objection to the Report and Recommendation [Doc. No. 15]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Petitioner's Objection.

Petitioner objects that the Magistrate Judge ignored or did not consider his argument that he is serving a forty-year sentence, with the remainder of his sentence of life imprisonment with the possibility of parole suspended. Hence, Petitioner argues that the provision in Okla. Stat. tit. 57, § 138(A) that “[n]o deductions [of earned credits] shall be credited to any inmate serving a sentence of life imprisonment” does not apply to him, the Magistrate Judge misconstrued the facts and her conclusion of law is erroneous.

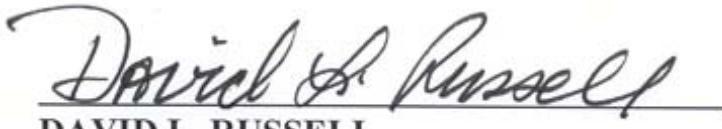
The Magistrate Judge did consider Petitioner's argument, *see* Report and Recommendation at p. 4, n. 1 & p. 8, n. 2, but did not directly address it. This Court, like the Magistrate Judge and the Oklahoma Court of Criminal Appeals implicitly did, construes the Judgment and Sentence herein to impose a sentence of “Life Imprisonment, with Eligibility

for Parole” as a life sentence, notwithstanding the additional language in the Judgment and Sentence that states “that said Defendant is to serve the first forty (40) years with the Oklahoma Department of Corrections, and that the remaining balance of the sentence is hereby suspended” Exhibit “1” to Petition. To construe the sentence otherwise, or as a forty-year sentence, would render it illegal as unauthorized by Oklahoma law. *See* Okla. Stat. tit. 21, § 701.9(A); Okla. Stat. tit. 21, § 701.10(A); *Pavatt v. Oklahoma*, 159 P.3d 272, 283 (Okla. Crim. App. 2007). Because Petitioner is serving a sentence of life imprisonment, precluding him from a deduction for earned credits, Okla. Stat. tit. 57, § 138, he does not have a liberty interest in earned time credits.

However, even if Petitioner’s argument was correct and he had a liberty interest in earned time credits, Petitioner’s own evidence shows that he was afforded all necessary due process. *See* Report and Recommendation at p. 8, n. 2. Petitioner does not object to the Magistrate Judge’s findings and conclusions in this regard.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge [Doc. No. 14 is ADOPTED in its entirety and Respondent’s motion to dismiss [Doc. No. 10] is GRANTED; alternatively, the petition herein for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is DENIED.

IT IS SO ORDERED this 24th day of February, 2011.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE